

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GREAT NORTHERN PAPER, INC.	:	CIVIL ACTION
	:	
v.	:	
	:	
YORK PAPER COMPANY	:	NO. 02-4620

MEMORANDUM AND ORDER

Fullam, Sr. J.

October 30, 2002

The defendant has filed a motion to dismiss Count V of plaintiff's complaint, which asserts a claim for "fraudulent inducement/misrepresentation/reliance." Plaintiff alleges in the complaint that the misrepresentation was made in a letter from defendant to plaintiff dated June 6, 2002 and that plaintiff, in reliance upon those misrepresentations, sent defendant a letter dated June 10, 2002 granting a \$600,000 credit against certain outstanding invoices. Defendant's motion to dismiss attaches complete copies of these two letters, which seem to demonstrate both that the defendant made no misrepresentation of any kind, and that, in any event, the claims now asserted in Count V of plaintiff's complaint were the basis of an accord and satisfaction.

In opposing the defendant's motion to dismiss, plaintiff contends that the Court may not consider the two letters attached to defendant's motion, since they were merely referred to in plaintiff's complaint and are not part of the

record which may properly be considered under Fed.R.Civ.P.

12(b)(6). While I'm inclined to think it would be permissible to consider the letters, from an abundance of caution I prefer to treat defendant's 12(b)(6) motion as a motion for summary judgment under Fed.R.Civ.P. 56. Plaintiff will be afforded a period of 20 days in which to respond to that motion by producing evidence sufficient to give rise to a legitimate dispute of fact.

An Order follows.

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ORDER

AND NOW, this day of October, 2002, IT IS
ORDERED:

1. Defendant's pending motion to dismiss Count V of plaintiff's complaint shall be deemed to constitute a motion for summary judgment as to Count V of plaintiff's complaint.

2. Plaintiff may respond to that motion within 20 days.

John P. Fullam, Sr. J.